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February 23, 2000

BY HAND

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
450 12th Street, S.W., Room TWA-235
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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Re: Comment Filing
MM Docket No. 99-339

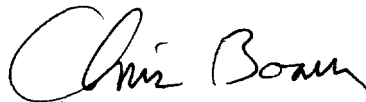
Dear Ms. Salas:

Enclosed are the comments of International Cable Channels Partnership, Ltd., to be filed in the above-captioned proceeding. Pursuant to Section 1.419 of the Commission's rules, I have enclosed the original and ten additional copies, for your office, each of the Commissioners, the Information Office and for the Mass Media Bureau.

Please date-stamp and return the enclosed extra copy to the courier for re-delivery to our office.

If there are any questions regarding this filing, please call me.

Respectfully submitted,


Christopher Paul Boam

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Enclosures

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**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Implementation of Video Description)	MM Docket No. 99-339
of Video Programming)	

**COMMENTS OF
INTERNATIONAL CABLE CHANNELS PARTNERSHIP, LTD.**

International Cable Channels Partnership, Ltd. ("ICCP") submits these Comments in response to the Commission's Notice of Proposed Rulemaking in this proceeding. ICCP owns and operates the International Channel, a foreign-language programming service, and represents ten foreign-language premium services and the Canales ñ package of Spanish-language programming services. Consequently, ICCP believes that it can provide unique insights into the issues and problems posed by mandatory video descriptions in foreign-language programming.

The International Channel is a multilingual video programming service providing educational and entertainment programming appealing to a variety of minority and ethnic groups. Launched in 1990, the International Channel presently is distributed by multichannel video programming distributors, particularly cable operators, throughout the United States to approximately 8.5 million subscribers. ICCP provides programming twenty-four hours per day to disparate ethnic groups in their native languages and features programming in multiple Asian,

European and Middle Eastern languages, including Arabic, Cambodian, Cantonese, Farsi, French, German, Greek, Hindi, Hmong, Italian, Japanese, Korean, Mandarin, Polish, Portuguese, Russian, Scandinavian (various), Spanish, Tagalog (Filipino), Thai and Vietnamese. A copy of its current programming schedule is annexed as Exhibit A. It is the kind of niche service which greatly expands the diversity of programming available to viewers by providing unique programming that otherwise would be unavailable. However, because the International Channel is a niche service directed at minority and ethnic viewers, it will be unable to develop the high subscriber levels achieved by general entertainment/information programming services with mass appeal, which limits its revenues from not only subscribers but also advertisers.

Likewise, the following foreign-language premium programming services represented by ICCP are targeted at narrow minority and ethnic viewerships: ART America (Arabic), CCTV-4 (primarily Mandarin), CTN (Mandarin), RAI (Italian), Scandinavian Channel (Norwegian, Swedish, Finnish, Danish and Icelandic), the Filipino Channel (primarily Tagalog), TV Asia (primarily Hindi, Gujarati and other South Asian languages), TV5 (French), TV JAPAN (Japanese), Zee TV (primarily Hindi and other South Asian languages), and the soon-to-be launched Melli Television (primarily Farsi). All of these foreign language services rely upon programming produced in foreign countries which, of course, would not be subject to any video description requirements adopted by the Commission. The nine Spanish-language services in the Canales ñ package include programming obtained from various foreign and domestic producers. Again, these foreign language programming services will achieve only limited subscriber and advertiser revenues.

I. Foreign-Language Programming Services Should Be Exempted from Mandatory Video Description.

In its Notice of Proposed Rulemaking, the Commission expressly acknowledged that it has based its video description proposal upon its closed captioning rules, recognizing that there is even less data and experience with video description:

This approach is generally modeled after our closed captioning rules. Our approach here is more measured, however, because video description technology is not as developed as closed captioning technology, and all distributors may not have the technical capability now to provide described programming.

Notice of Proposed Rulemaking, MM Docket No. 99-339, FCC 99-353 (rel. Nov. 18, 1999), at ¶21. Thus, the Commission observed that “none” of the programming for which video description currently exists “is available without the assistance of public funding.” Id. at ¶2.

Under the closed captioning model, the Commission should exempt all foreign-language programming from mandatory video descriptions. The factual support for such exemption is consistent with the empirical data supporting the foreign-language exemption for mandatory closed captioning and equally compelling. As the Commission previously recognized, the “potential audiences” for foreign-language programming “tend to be very limited and thus the economic support is limited.” Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, 13 FCC Rcd 3272 (1997), at ¶147. The Commission also concluded that foreign-language programming services face unique problems because the foreign producers of such programming are not subject to closed captioning requirements and retransmission may occur immediately upon receipt of the programming:

Where the programming is acquired from outside of the United States, in many situations, additional logistical problems are presented due to the timing of the programming delivery process and the fact that the programming is produced

primarily for markets outside of the United States, where there is no closed captioning obligation and, indeed, where there may be no technical system and standards for the distribution of such materials.

Id. For example, ICCP retransmits the foreign language premium programming services which it represents immediately upon downlinking from their foreign sources. These unique factors -- which plainly justify a categorical exemption from the closed captioning obligations for foreign-language programming -- mandate the same exemption from the video description requirements.

In short, mandatory video descriptions for foreign-language programming services, such as the International Channel, would pose insurmountable technical issues and an excessive economic burden upon ICCP. Consequently, ICCP respectfully requests that the Commission exempt foreign-language programming services from video description requirements, i.e. programming services for which the programming aired is primarily in a foreign language.¹

II. The Economic Burden of Describing a Foreign-Language Programming Service Would Be Prohibitive.

A. Higher Costs And Limited Revenues

Notwithstanding the limited experience with video description, the Commission has recognized that description would substantially increase programming production costs:

Other barriers to more widespread use of video description are inherent to the service. For instance, the service requires development of a second script. The development and production of this second script can add considerably to both the production time and the budget required to produce a program.

¹ The requirement that the programming be primarily in one or more foreign languages demonstrates conclusively that a programming service is a niche foreign-language service. However, it provides the flexibility to include a minimal amount of English language programming without requiring programmers to submit a series of waiver petitions, thereby avoiding such burden to the programmer and the Commission.

Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, 11 FCC Rcd 19214 (1996) (“Video Accessibility Report”), at ¶120 (notes omitted). Although ICCP has no experience with video descriptions of programming in multiple foreign languages, it respectfully submits that the costs and delays in describing such programming would increase exponentially. In addition to the substantially higher costs, ICCP would anticipate more difficult technical issues and the virtual absence of foreign-language video description expertise.

Although ICCP has worked hard over the decade since launch of the International Channel and has obtained significant distribution throughout the United States, the fact remains that services appealing to niche markets, such as minority and ethnic viewers, will have “much more limited distribution, as well as more limited advertising and subscriber revenues than most English language programming.” Video Accessibility Report at ¶80. Consequently, ICCP would have substantially fewer subscribers over which to spread its higher video description costs. Further, the lower advertising revenues available to foreign-language niche services would only exacerbate the economic burden of video descriptions. Advertising spots on the International Channel typically range from \$50 to \$400 per thirty-second spot -- far less than the rates for advertising on English-language services with mass appeal.

B. Relationship to Programming Budget

ICCP has a very modest programming budget for the International Channel. Much of the International Channel’s programming is obtained without charge, for a minimal charge or on a barter basis, and some programmers pay ICCP to air programming on the International Channel. Consequently, although it would be difficult to estimate precisely the cost of video descriptions for the programming on the International Channel because such

descriptions simply are not feasible or available, ICCP believes that the cost of video descriptions would substantially exceed its programming budget. The economic burden of video description also could not be shifted to the programming producers who are providing programming without charge, for a minimal charge or on a barter basis. Again, the production budgets for individual programs are very limited, and video description would increase programming costs by a significant percentage and would prohibit ICCP from being able to offer this programming. Instead, ICCP would be forced to incur the video description costs or abandon these valuable sources of foreign programming.

C. Minimal Repeat Value

The economic burden of video description for the International Channel's programming would be particularly onerous for ICCP because much of the programming has no library value. ICCP estimates that roughly half of the programming aired on the International Channel is topical programming, including news, which has value only when aired contemporaneously with or shortly after its production. Thus, video description costs cannot be spread over multiple showings or recouped through subsequent airings on other media.

III. Video Description of Foreign-Language Programming Presents Unique And Complicated Issues Under International Law Protecting Moral Rights.

Clearly, video description of programming should not be required if such descriptions would violate licensing agreements with foreign producers or foreign law. Thus, programming subject to any of the following types of licensing agreements with foreign producers also should be exempt from video description requirements: (1) licensor has broad

reservation of rights without expressly granting video description rights; (2) licensor has expressly reserved moral rights; or (3) foreign law controls and moral rights cannot be waived.

Under international copyright law, “moral rights” generally are defined as the personal right protecting the bond between the author and his work and are independent of the author's economic rights in his work. See, e.g., International Copyright Law and Practice Vol. I-II, §7, at FRA 90-91, POL 32-33 (Paul E. Geller ed., 10th rel. 1998). Moral rights protect the integrity of the work as a whole, requiring that both the content and form of the work be maintained. Where the “moral rights” to a work are reserved, impermissible changes would include alterations such as “omissions, supplements, or additions to a work.” Id. at FRA 91, POL 33. Although there are exceptions, generally countries recognizing moral rights construe such exceptions narrowly. See id. Further, if foreign language programming were translated to English, many of the terms and characters would be subject to multiple interpretations, substantially increasing the risk of moral rights violations.

Thus, the video descriptions for foreign-language programming may violate the moral rights of foreign producers and creators where such rights have been reserved contractually, or where such rights are granted automatically by a particular country's copyright laws. Although ICCP has not researched these foreign law issues exhaustively, it is aware that the laws governing sources of its foreign-language programming, including those of France, Germany, Greece, Hungary, Italy and Poland, recognize and enforce moral rights. These complicated issues of foreign law provide a separate and independent ground for categorically exempting foreign-language programming services from mandatory video descriptions.

Conclusion

ICCP respectfully requests that the Commission exempt foreign-language programming services from mandatory video descriptions. Foreign-language programming services should be defined as services for which the programming is aired primarily in a foreign language. Video descriptions for foreign-language programming, particularly in multiple languages from foreign sources, is technologically impractical and economically burdensome and raises unique moral rights issues under foreign law.

February 23, 2000

Respectfully submitted,

INTERNATIONAL CABLE
CHANNELS PARTNERSHIP, LTD.

By: Kent A. Rice *CRB*
Kent A. Rice
President & Chief Operating Officer
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Littleton, Colorado 80122

EXHIBIT A

International Channel®

Pacific	Central	Eastern	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
3:00 am*	5:00 am*	6:00 am	Arabic News: <i>LBC News</i> (Arabic)					<i>Video Heaven</i> (Korean)	<i>Kev Koom Siab</i> (Hmong with English subtitles)
3:30*	5:30*	6:30	Arabic News: <i>ART International News</i> (Arabic)						<i>British Variety</i> (English)
4:00*	6:00	7:00	French News: <i>Télématin</i> (French)					<i>Korean Children's Po Po Po</i> (Korean)	<i>Filipino Children's Bayani</i> (Tagalog)
4:30*	6:30	7:30	Mandarin News: <i>TTV News from Taiwan</i> (Mandarin)						<i>Filipino Children's Math Tinik</i> (Tagalog)
5:00*	7:00	8:00	German Magazine (English)					<i>French Children's Animation</i> (French)	<i>Extreme Sports Surf Channel</i> (English)
5:30*	7:30	8:30	German News: <i>Deutsche Welle</i> (German) <i>Doppelpass</i> (German) (Wed. only)						<i>UK Today</i> (English)
6:00	8:00	9:00	Spanish News: <i>CBS Telenoticias</i> (Spanish)					<i>Spanish Children's The Little Prince</i> (Spanish)	<i>Jerusalem On Line</i> (English)
6:30	8:30	9:30	Polish News: <i>Polsat News</i> (Polish)						<i>Russian Variety</i> (Russian)
7:00	9:00	10:00	Japanese News: <i>Fujisankei News</i> (Japanese with English subtitles)					<i>U.N. World Chronicle</i> (English)	Japanese News: <i>Hodo 2001</i> (Japanese)
7:30	9:30	10:30	Japanese News: <i>Fujisankei News</i> (Japanese)					<i>Pardes</i> (English)	
8:00	10:00	11:00	<i>Tea Time</i> (Mandarin)			<i>China Sports from CCTV</i> (Mandarin)		(Paid Programming)	<i>The Message</i> (English)
8:30	10:30	11:30	Filipino Drama: <i>Flames</i> (Tagalog)					<i>CCTV Drama</i> (Mandarin with English subtitles)	(Paid Programming)
9:00	11:00	12:00 pm	Cantonese Drama (Cantonese)						
9:30	11:30	12:30	SBS Drama (Korean)			SBS Variety (Korean)	SBS <i>Unsolved Mystery</i> (Korean)	(Paid Programming)	
10:00	12:00 pm	1:00	Vietnamese Drama (Vietnamese)						
10:30	12:30	1:30	Hindi Drama (Hindi)			Hindi Variety		<i>Islam</i> (English)	Hindi Movie (Hindi with English subtitles)
11:00	1:00	2:00	Hindi Drama (Hindi)						
11:30	1:30	2:30	French Variety (French)					<i>Motor Magazine</i> (English)	
12:00 pm	2:00	3:00	Korean Dating Game: <i>Love Studio</i> (Korean)					<i>WUW Football</i> (English)	
12:30	2:30	3:30	Spanish Cooking: <i>The Easy Cooking Show</i> (Spanish)					<i>Sport Africa</i> (French)	(Paid Programming)
1:00	3:00	4:00	Scandinavian Variety (Various Scandinavian languages)						
1:30	3:30	4:30	Russian News: <i>Vremya</i> (Russian)					<i>ART Soccer</i> (Arabic)	<i>RAI Soccer</i> (Italian)
2:00	4:00	5:00	Portuguese News: <i>CBS Telenoticias</i> (Portuguese)						
2:30	4:30	5:30	Spanish News: <i>CBS Telenoticias</i> (Spanish)						
3:00	5:00	6:00	French News: <i>Journal TV News</i> (French with English subtitles)					(Paid Programming)	<i>The World of Rugby</i> (English)
3:30	5:30	6:30	Greek News: <i>Antenna Satellite News</i> (Greek)					<i>Dragonball Z</i> (Japanese)	<i>Extreme Sports Surf Channel</i> (English)
4:00	6:00	7:00	Filipino News: <i>Philippines Tonight</i> (English)					<i>Cantonese Movie</i>	
4:30	6:30	7:30	South Asian News: <i>TV Asia News</i> (English)					(Cantonese with English subtitles)	<i>Dragonball Z</i> (Japanese)
5:00	7:00	8:00	Arabic News Repeat: <i>ART International News</i> (Arabic)						<i>Music Fair</i> (Japanese)
5:30	7:30	8:30	Mandarin News: <i>World Wide Watch from CCTV</i> (English)						
6:00	8:00	9:00	Cantonese News: <i>International Report News</i> (Cantonese)					<i>French Film Festival</i> (French with English subtitles)	<i>Fuji Drama</i> (Japanese)
6:30	8:30	9:30	Korean News: <i>MBC News Desk</i> (Korean)						<i>SBS Sunday Night Drama</i> (Korean)
7:00	9:00	10:00	Mandarin News: <i>World Report</i> (Mandarin)						
7:30	9:30	10:30	Mandarin News: <i>Oriental Horizons from CCTV</i> (Mandarin)						
8:00	10:00	11:00	Italian News: <i>Telegiornale</i> (Italian)						
8:30	10:30	11:30	Vietnamese News: <i>Global Report News</i> (Vietnamese)						
9:00	11:00	12:00 am*	Vietnamese Drama Repeat (Vietnamese)						
9:30	11:30	12:30*							
10:00	12:00 am*	1:00*	Channel V's <i>Korean Top 10</i> (Korean)	Channel V's <i>I Am Siam</i> (Thai)	Channel V's <i>Indian Top 10</i> (English)	Channel V's <i>Music Videos</i> (Cantonese)	Channel V's <i>Chinese Top 20</i> (Mandarin)	<i>Video Heaven</i> (Korean)	(Paid Programming)
10:30	12:30*	1:30*	Filipino Drama: <i>Mara Clara</i> (Tagalog)						
11:00	1:00*	2:00*	(Paid Programming)					(Paid Programming)	<i>Portuguese Drama</i> (Portuguese)
11:30	1:30*	2:30*	(Paid Programming)						
12:00 am*	2:00*	3:00*	(Paid Programming)						
12:30*	2:30*	3:30*	(Paid Programming)						
1:00*	3:00*	4:00*	(Paid Programming)						
1:30*	3:30*	4:30*	(Paid Programming)						
2:00*	4:00*	5:00*	Filipino News Repeat: <i>Philippines Tonight</i> (English)					<i>Hungary 2000</i>	<i>Cambodian Drama</i> (Cambodian)
2:30*	4:30*	5:30*	South Asian News Repeat: <i>TV Asia News</i> (English)					<i>Romanian Voice</i>	

☐ News
 ☐ Drama/Variety/Children's
 ☒ Sports
 ☒ Movies
 ☐ Paid Programming

For program information, call (303) 712-5454, or visit our Web site at www.i-channel.com. Schedule subject to change.

* The programs during these times are included as part of the previous day's overnight time block. For example, *Portuguese Drama* technically airs early Monday morning but is included as a late Sunday night listing.